No. 01-941 (2)

Supreme Court U.S.
FILED
MAR 4 2002
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

20TH CENTURY INSURANCE COMPANY,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES; LINDA P. AHLES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL

BRIEF IN OPPOSITION OF RESPONDENT LINDA P. AHLES

BRIAN S. KABATECK
SUZANNE HAVENS BECKMAN
HEATHER M. MASON
QUISENBERRY & KABATECK LLP
2049 Century Park East, 22d fl.
Los Angeles, California 90067
(310) 785-7966

JEFFREY ISAAC EHRLICH
Counsel of Record
SHERNOFF, BIDART & DARRAS
600 S. Indian Hill Boulevard
Claremont, California 91711
(909) 621-4935

DALE E. WASHINGTON
9550 Warner Avenue, Suite 250
Fountain Valley, CA 92708
(714) 593-2317

GEORGE KEHRER
2608 Second Avenue
Seattle, Washington 98121
(206) 256-0123

Counsel for Respondent Linda P. Ahles

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

15 pp

QUESTION PRESENTED

Whether California's statutorily-mandated limitations period for property insurance claims must be treated differently than an ordinary statute of limitations for the purposes of applying this Court's precedents allowing the retroactive extension of a statute of limitations.

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS WHY THE WRIT SHOULD BE DENIED 3

A. 20th Century greatly exaggerates the impact of the one year revival of certain Northridge earthquake insurance claims 3

B. The decision below correctly applied this Court's settled precedents 6

1. Section 340.9 is a statutorily-mandated limitations period, which the California Legislature was free to extend without violating the Constitution 6

2. Section 340.9 is not an unconstitutional impairment of contracts 8

C. 20th Century raises the *ex post facto* clause for the first time in its petition 9

CONCLUSION 10

TABLE OF AUTHORITIES

CASES:

Bialo v. Western Mutual Ins. Co.,
95 Cal.App.4th 68, 115 Cal.Rptr. 2d 3
(2002) 7

Bollinger v. National Union Fire Ins. Co.,
25 Cal.2d 399, 154 P.2d 399 (1944) 7

Calder v. Bull,
3 U.S. (3 Dall.) 386 (1798) 10

Campbell v. Holt,
115 U.S. 620, 6 S.Ct. 209,
29 L.Ed. 483 (1885) 2, 6

Chase Securities Corp. v. Donaldson,
325 U.S. 304, 65 S.Ct. 1137,
89 L.Ed. 1628 (1945) 2, 6, 7

Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400,
103 S.Ct. 697, 74 L.Ed.2d 569
(1983) 8, 9

Exxon Corp. v. Eagerton, 462 U.S. 176,
103 S.Ct. 2296, 76 L.Ed.2d 497
(1983) 9

Hellinger v. Farmers Ins. Exch.,
91 Cal.App.4th 1049,
111 Cal.Rptr.2d 268 (2001) 4

U.S. v. Williams, 504 U.S. 36,
112 S.Ct. 1735, 118 L.Ed.2d 352
(1992) 9

Vu v. Prudential Prop. & Cas. Ins. Co.,
26 Cal.4th 1142,
113 Cal.Rptr. 2d 70 (2001) 1, 6, 8

STATUTES:

Cal. Code Civ. Proc. § 337 1

Cal. Code Civ. Proc. § 340.9 ..... *passim*

Cal. Ins. Code § 2071 ..... 1, 7, 8

STATEMENT OF THE CASE

Under California law, the statute of limitations for breach of a written contract is four years. Cal. Code Civ. Proc. § 337. But insurance claims for property damage have a one year limitation. Cal. Ins. Code § 2071; *Vu v. Prudential Prop. & Cas. Ins. Co.*, 26 Cal.4th 1142, 1148, 113 Cal.Rptr. 2d 70 (2001).

In 1999, the California Legislature extended the limitation period for claims arising out of the January 17, 1994, "Northridge" earthquake. The statute, codified at Cal. Code Civ. Proc. § 340.9, allowed certain insureds with claims arising out of the earthquake to file actions against their insurers between January 1, 2001, and January 1, 2002.

Respondent Linda Ahles's home was damaged in the Northridge earthquake. She had a homeowner's insurance policy, with an endorsement for earthquake coverage, issued by petitioner 20th Century Insurance Company. (App. 4, 5.) In May 1994, Ahles notified 20th Century that her property had sustained earthquake damage. (App. 5.) 20th Century sent an adjuster, and then an engineer to inspect her property. (*Id.*) Based on these inspections, 20th Century notified Ahles that the amount of damage was less than the amount of the earthquake deductible. (*Id.*) It therefore made no payment to Ahles. (*Id.*)

Roughly four years later, a termite inspector observed earthquake damage in Ahles's home. In September 1998, she filed a supplemental

claim with 20th Century for earthquake damage. (App. 5.) Almost a year later, 20th Century sent an adjuster to inspect Ahles's home. The adjuster determined that the damage was not caused by the Northridge earthquake. (*Id.*) Based on that ground, and because she had not submitted her supplemental claim within the one-year limitation period, 20th Century denied the supplemental claim. (App. 6.)

Ahles filed suit in 1999, before § 340.9 had been enacted. (Petition at 7.) The trial court initially sustained 20th Century's demurrer based on the one-year limitations period. (*Id.*) But the court reconsidered its ruling after § 340.9 became effective. (*Id.*) 20th Century sought interlocutory review of this ruling, and the Court of Appeals agreed to hear its petition. (App. 11.) After full briefing and oral argument, the Court of Appeal denied the petition in a published opinion. (App. 1.)

The court held that under this Court's decisions in *Campbell v. Holt*, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885) and *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 65 S.Ct. 1137, 89 L.Ed. 1628 (1945), and parallel California authority, the Legislature was free to revive a civil cause of action that has become time-barred under a former statute of limitations. (App. 18, 19.) The court noted that insurance was an extensively regulated industry, and that the legislative history of § 340.9 showed that the Legislature considered "compelling reports of rampant mishandling of insurance claims by insurers [after the Northridge earthquake], and the unavailability

of relief from the former administration of the Department of Insurance." (App. 22, 26.) The court held that the revival of time-barred claims for one year did not rise to the level of a substantial impairment of the insurers' contracts, nor did it destroy any vested contract rights in violation of the due process clause. (App. 31 and 35-37.)

The Court of Appeal denied 20th Century's petition for rehearing, and the California Supreme Court denied 20th Century's petition for review. (App. 51 and 57.)

REASONS WHY THE WRIT SHOULD BE DENIED

A. 20th Century greatly exaggerates the impact of the one year revival of certain Northridge earthquake insurance claims

The petition says that § 340.9 revived "all" time-barred earthquake claims, creating a "massive" impairment of contract rights, with an "astounding" potential to revive hundreds of thousands of claims and upset billions of dollars worth of settlements that insurers paid after the Northridge earthquake. (Petition at i, 6, 8, 16.) The enormity of the impact of the statute is key to 20th Century's claim that the issue is worthy of this Court's review, and to its argument that the impairment of its contracts is substantial.

The petition plays down, to the point of ignoring, the fact that § 340.9 was operative for only one year, from January 1, 2001 to January

1, 2002. *Hellinger v. Farmers Ins. Exch.*, 91 Cal.App.4th 1049, 111 Cal.Rptr.2d 268 (2001) (noting that the statute became effective on January 1, 2001 and extended the statute for lawsuits filed within one year of its effective date.)

20th Century filed its petition with this Court less than two weeks before the statute expired. It therefore was in a position to tell the Court exactly what the impact of the statute had been. It likely knew the total number of lawsuits that had been filed in the 11½ months the statute had been effective, and it certainly knew how many lawsuits had been filed against it. Evidently, it determined that those numbers would be far less impressive to this Court than abstract references to the total number of potential claimants the statute might affect.

The insurer in *Hellinger* claimed, as 20th Century does here, that the statute potentially revived in excess of 600,000 claims. The *Hellinger* panel was appropriately skeptical of this number, noting that nothing supported the insurer's claim that vast numbers of insureds would be eligible to avail themselves of the extension granted by § 340.9. 91 Cal.App.4th at 1065. The court explained that the reference to 600,000 potential claimants referred to the gross number of claimants, but that the restrictions within § 340.9 and the fact it was operative for only a year "severely circumscribed" the size of the subset of claimants who would file suit. *Id.*

The court further noted that it was no less speculative to posit, as it assumed the Legislature

did, that many, if not most, insureds were satisfied with the treatment they had received from their insurers, and had no desire to engage in litigation, particularly since the statute did not affect any defenses the insurer might have other than the statute of limitations. *Id.* These observations apply here, as well.

Contrary to the statement in the Question Presented as framed by the petition, § 340.9 neither revives *all* potential claims arising out of the Northridge earthquake, nor invalidates any settlement agreements. 20th Century ignores the internal restrictions on the scope of § 340.9. The statute does not revive claims unless the insured had contacted the insurer about the claim before the statute was effective; does not apply to claims that were "litigated to finality;" and does not apply to claims that were resolved with written settlement agreements that meet certain criteria. (App. 21.)

Nor does the statute void any settlements. Rather, as the court below observed, the reference to settlements "serves only to describe one of the circumstances where § 340.9 will *not* apply." (App. 32, emphasis in text.) The petition ultimately acknowledges that settlements would be voided "under one reading of the statute." (Petition at 3.) But no court has ever adopted this reading.

The petition is also inaccurate in suggesting that absent the enactment of § 340.9, insurers would have been able to close their books on the Northridge earthquake a year after it occurred.

To the contrary, even without § 340.9, Ahles would have a claim against 20th Century based on the denial of her supplemental claim. This is because California law estops insurers from asserting the one-year limitation period as a defense where, as here, the insured has relied on the insurer's representation about the origin or extent of property damage and fails to timely file suit as a result. The California Supreme Court reaffirmed this rule in *Vu v. Prudential Prop. & Cas. Ins. Co.*, 26 Cal.4th 1142, 1148, 113 Cal.Rptr. 2d 70 (2001).

Vu demonstrates that insurers never had a reasonable expectation under California law that their exposure for Northridge earthquake-related claims dropped to zero after the one-year limitation period expired. Rather, they continued to face claims as insureds discovered previously undiscovered earthquake damage. 20th Century's claims about the impact of § 340.9 are accordingly greatly exaggerated.

B. The decision below correctly applied this Court's settled precedents

1. Section 340.9 is a statutorily-mandated limitations period, which the California Legislature was free to extend without violating the Constitution

This Court's decisions in *Campbell v. Holt*, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885) and *Chase Securities Corp. v. Donaldson*, 325 U.S.

304, 65 S.Ct. 1137, 89 L.Ed. 1628 (1945), hold that in a civil case, there is no constitutional right to repose. Accordingly, it has been established law for over a century that a legislature may revive a civil claim that is barred by the statute of limitations.

20th Century seeks to circumvent these decisions by relying on the impairment of contract clause. It claims that § 340.9 is not actually a "statute" of limitations, but is rather a contractual limitations provision, which § 340.9 unconstitutionally impairs.

This premise — that the one-year limitation period is something other than a statute of limitations — is not supported by California law. As the Court of Appeal noted below, "The 'contractual' limitation period in 20th Century's policy is mandated by statute (Ins. Code § 2071). It is therefore properly treated as a *statute* of limitations . . . ." (App.35, emphasis in text.) *Accord, Bialo v. Western Mutual Ins. Co.*, 95 Cal.App.4th 68, 81, 115 Cal.Rptr. 2d 3 (2002) ("We reject . . . amici's claim that because the Legislature enacted the one-year notification period by requiring its insertion in the policy rather than by enacting an express limitation period, it somehow is not a limitations period.")

The California Supreme Court has consistently taken this view. In *Bollinger v. National Union Fire Ins. Co.* 25 Cal.2d 399, 406, 407, 154 P.2d 399 (1944), the court referred to the limitation period prescribed by Ins. Code § 2071 as "the short statutory limitation period in the present

case" and recognized that in enacting the one-year suit provision, "the Legislature has shortened the limitation period from four years." 25 Cal.2d at 407, 408. More recently, in *Vu*, the court stated that Ins. Code § 2071 shortened the "ordinary statute of limitations" for breach of a written contract. *Vu*, 26 Cal.4th at 1148.

This Court has observed that, "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them." *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983), citing *Hudson Water Co. v. McCarter*, 209 U.S. 349, 357, 28 S.Ct. 529, 52 L.Ed. 828 (1908). If the California Legislature is constitutionally permitted to extend a "statutory" statute of limitations (which 20th Century concedes), there is no reason why it should lack the power to extend a statutorily-mandated limitations period that it has prescribed for insurance contracts.

2. Section 340.9 is not an unconstitutional impairment of contracts

Even if the one-year period is treated differently than a statutory limitations period, § 340.9 does not run afoul of the impairment of contracts clause. Although the language in the clause is facially absolute, "its prohibition must be accommodated to the inherent police power of the State to 'safeguard the vital interests of its people.'" *Energy Reserves Group, Inc.*, 459 U.S. at 410 (ci-

tations omitted). Hence, a law does not violate the impairment of contract clause "simply because it has the effect of restricting, or even barring altogether, the performance of duties created by contracts entered into prior to its enactment." *Exxon Corp. v. Eagerton*, 462 U.S. 176, 190,103 S.Ct. 2296, 76 L.Ed.2d 497 (1983). 20th Century concedes this, as it must.

Its argument, pared to its essentials, is that the California Legislature did a poor job of calibrating the amount of relief necessary to assist the group of insureds it wanted to help. But the decision below demonstrated that the Legislature gave the matter "detailed consideration." (App. 28 n. 22.) The statute it enacted provided a limited amount of relief to a limited class of potential claimants, for a limited period of time. (App. 21.) This Court has accorded substantial deference to a legislature's judgment about the necessity and reasonableness of a particular measure. *Energy Reserves*, 459 U.S. at 412. 20th Century offers no reason why the California Legislature's judgment here should not be given similar deference.

C. 20th Century raises the *ex post facto* clause for the first time in its petition

It is Ahles's understanding that this Court ordinarily will not grant certiorari on an issue that has neither been pressed nor passed on below. *See, e.g., U.S. v. Williams*, 504 U.S. 36, 41, 112 S.Ct. 1735, 118 L.Ed.2d 352 (1992). 20th Century did not press the issue that § 340.9 violated the *ex post facto* clause in the California

courts, nor did any of the courts below pass on that issue.

In any event, 20th Century offers no explanation of why this case would represent an appropriate case to reconsider its adherence to a two-century-old rule limiting the operation of the *ex post facto* clause to criminal cases. *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798). 20th Century's difficulty in squaring its position with this Court's decisions on the due process and impairment of contracts clauses does not create any basis to reconsider *Calder*.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

Brian S. Kabateck
Suzanne Havens Beckman
Heather M. Mason
Quisenberry & Kabateck LLP
2049 Century Park East, 22d fl.
Los Angeles, California 90067
(310) 785-7966

Jeffrey Isaac Ehrlich
Counsel of Record
Shernoff, Bidart & Darras
600 S. Indian Hill Boulevard
Claremont, California 91711
(909) 621-4935

Dale E. Washington
9550 Warner Avenue, Suite 250
Fountain Valley, CA 92708
(714) 593-2317

George Kehrer
2608 Second Avenue
Seattle, Washington 98121
(206) 256-0123

Counsel for Respondent Linda Ahles